

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREGORY W. ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**UNITED STATES' UNOPPOSED MOTION TO SET A JOINT STATUS CONFERENCE**  
**AND**  
**FINAL PRETRIAL CONFERENCE**

Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, the United States respectfully moves this Court to schedule a joint status conference and final pretrial conference. The United States requests a status conference given multiple outstanding matters, including legislative privilege questions pending before the Fifth Circuit or briefing stayed pending a decision from the Fifth Circuit; unsealing depositions regarding legislative privilege; and unresolved motions to compel document production, quash depositions, and reopen depositions. The timeline for resolving these threshold evidentiary issues puts the feasibility of maintaining the scheduled September 28 trial date in question for a number of parties and the outcome of these matters has significant bearing on the presentation of claims.

The Initial Scheduling Order notes that the Court may announce a pretrial conference at a later date, *see* Order 4 n.1, ECF No. 96, but no such conference has been set. The United States respectfully requests a conference so that the Court may provide guidance concerning the manner in which it wishes to hear evidence.

The United States, Private Plaintiffs, and Defendants have met and conferred about issues related to trial. In particular, the United States requests on behalf of all parties to know the number of trial hours allotted on each calendar day to prepare efficient presentations and arrange for witness travel. The parties would be interested in establishing a clock or similar feature for keeping time that would allow all Plaintiffs 50 percent of the time and Defendants 50 percent of the time. The United States also respectfully requests that the Court adopt the following procedures, which have been used by other courts to facilitate efficient consideration of Voting Rights Act claims and are unopposed by the other parties:

- Simultaneous exchange of designations of deposition testimony for inclusion in the trial record, to be followed by simultaneous exchange of counter-designations for further admission in the trial record.
- Admission of affidavits submitted by witnesses presented solely for the purpose of establishing standing, for those witnesses for whom Defendants agree to waive cross-examination after examining said affidavits.
- Allowance for expert witnesses to present testimony concerning both a case in chief and rebuttal case in a single appearance.

The United States has attached Exhibit 1 that provides more detail about these features, including a timeline for exchanging deposition designations and filing motions *in limine*. The United States sought to include (a) admission into evidence of expert reports submitted by any expert who also testifies live at trial or (b) submission of a declaration for expert direct testimony with live cross examination and redirect, but Defendants would not agree to such procedures. The United States respectfully requests that the Court consider those procedures at the conference. The United States also acknowledges that there are additional matters for pretrial

consideration that the parties have not yet discussed. Accordingly, Exhibit 1 is not intended to be a complete list of all pretrial matters to be considered at a conference.

Pursuant to Local Rule CV-7(f), the proposed order is attached hereto.

Dated: August 22, 2022

JOHNATHAN SMITH  
Acting Principal Deputy Assistant Attorney General  
Civil Rights Division

REBECCA B. BOND  
Acting Deputy Assistant Attorney General  
Civil Rights Division

/s/ Michelle Rupp  
T. CHRISTIAN HERREN, JR.  
TIMOTHY F. MELLETT  
DANIEL J. FREEMAN  
JANIE ALLISON (JAYE) SITTON  
MICHELLE RUPP  
JACKI L. ANDERSON  
JASMIN LOTT  
HOLLY F.B. BERLIN  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

### **CERTIFICATE OF CONFERRAL**

Pursuant to Local Rule CV-7(g), I hereby certify that on August 22, 2022, I met and conferred with counsel for Defendants regarding this motion. Counsel for Defendants advised that they do not object to the relief sought in the above motion, as further clarified by the attached Exhibit 1, with the exception of the admission of expert reports or expert declarations. Likewise, on August 19, I met and conferred with counsel for Plaintiffs in this consolidated case, and they do not oppose the relief sought.

/s/ Michelle Rupp

Michelle Rupp  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530  
(202) 305-0565  
michelle.rupp@usdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Michelle Rupp

Michelle Rupp  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530  
(202) 305-0565  
michelle.rupp@usdoj.gov